

November 7, 2002

# CONTENT PROTECTION STATUS REPORT III

## Overview

This is to update the Content Protection Status Reports dated April 25 and June 26, 2002. In brief, the Federal Communications Commission (FCC) has initiated a rulemaking proceeding on the **broadcast flag**—to protect digital broadcast programs from Internet redistribution—with significant bipartisan and bicameral support from Congress. Further Congressional support for implementation of the flag was demonstrated at a House Commerce Committee hearing in September. However, some in the Information Technology (IT) community appear to have wavered from their previous support of the flag in principle. A promising solution to the **analog hole** problem suffered a setback at the end of July when directors from the IT community voted against adoption of a watermark by the body administering the DVD copy protection technology. On the **Peer-to-Peer (P2P)** front, hearings in both the House and Senate Commerce and Judiciary Committees on P2P piracy and the digital transition further underscored the urgency of the problem. A meeting between executives from the movie studios and the IT community was held in September, but tangible progress toward stopping unauthorized P2P file trafficking in copyrighted works remains elusive.

## Goal One: The Broadcast Flag

The Co-Chairmen of the Broadcast Protection Discussion Group (BPDG) issued a Report on June 3 presenting a broad, multi-industry consensus on a broadcast flag solution that would provide a technological means to prevent the unauthorized redistribution of digital broadcast programming, including over the Internet. Following the last of a series of digital television (DTV) "roundtable" meetings conducted by the Chairman of the House Commerce Committee, in July the Chairman of the Senate Commerce Committee as well as the Chairman and Ranking Minority Member of the House Commerce Committee sent letters to FCC Chairman Powell noting the BPDG broadcast flag consensus and urging FCC action to prevent unauthorized redistribution of over-the-air DTV content. In addition, draft legislation authored by the Chairman of the House Commerce Committee would mandate that the FCC implement the broadcast flag. In August the FCC issued a Notice of Proposed Rulemaking aimed at implementing the broadcast flag solution. The date for filing initial comments has been extended to December 6. MPAA member companies have prepared draft comments and are engaged with certain members of the

Consumer Electronics (CE) and IT communities to work out consensus positions. Although the IT community expressed support for the flag in principle during the BPDG process, recent statements by some IT representatives questioning "the need for use of a 'broadcast flag'" suggest a wavering in this support.

### **Goal Two: The Analog Hole**

In August, the DVD Copy Control Association (DVD CCA) board could not reach agreement on the selection of a watermark technology for copy and playback control in DVD players and drives. While supported by a majority of the DVD CCA directors, the two IT industry representatives voted against the selection, which required unanimity. Agreement on a watermark would have been the first step in protecting against the unauthorized playback and recording of content that has "escaped" a digital content protection system (e.g., CSS encryption), including protected digital content that has been converted to analog form. Had the DVD CCA been able to select a watermark, such a proposal would have marked a significant step forward in plugging the "analog hole," which is a term used to describe the gap in content protection architecture that results when protected digital content is converted to analog form (resulting in a loss of its copy/transmission protection) and then back to an unprotected digital format. In the interim, however, the Chairman of the House Commerce Committee offered draft legislation to help resolve the analog hole problem. More than a dozen Members of the House Commerce Committee sent a letter to the Chairman and Ranking Member urging that any omnibus digital television legislation include a provision to plug the analog hole.

### **Goal Three: Infringing Peer-to-Peer (P2P) Networks**

In September representatives of the major motion picture studios met with representatives of major IT companies to discuss content protection issues, including P2P piracy. Further engagement between these groups is anticipated in a variety of areas, but a specific work plan for finding technological solutions to stem the avalanche of movie and other content theft on P2P networks remains elusive. Moreover, the endorsement by portions of the IT and CE communities of a handful of recent bills that would actually make it even more difficult to protect copyrighted works from wholesale copying and redistribution is straining efforts rather than facilitating solutions. Finally, press accounts indicate that the Department of Justice is considering bringing actions against some of the most egregious P2P file traffickers. But while many have urged such efforts—including the Chairmen of both the House and Senate Crime Subcommittees as well as officials at the Department of Commerce—at least one leading CE association has publicly criticized this approach.

This lack of progress on P2P piracy is disappointing given independent reports estimating that the growth of P2P file trafficking has increased dramatically—and given that one of the most infamous P2P engines, KaZaA, now boasts that its software has been downloaded more than 135 million times and that more than two million people are using its network at any given moment. In fact, a recent check revealed more than 560 million files being offered for download on KaZaA at a single point in time.